



April 17, 2015

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667
Via <https://foiaonline.regulations.gov>

Re: Freedom of Information Act Request—Holcomb Coal-Fired Power Plant

Dear FOIA Officer:

On behalf of the Sierra Club, I am writing to request that the U.S. Environmental Protection Agency (“EPA”) provide copies of the records described below pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the EPA regulations at 40 C.F.R. § 2.100, *et seq.*

Sierra Club is the nation’s oldest grassroots organization. It has more than 2.4 million members and supporters nationwide. Sierra Club is dedicated to the protection and preservation of the natural and human environment. Sierra Club’s purpose is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.

One of Sierra Club’s priority national conservation campaigns involves promoting smart energy solutions. Sierra Club is particularly interested in ensuring that coal-fired power plants comply fully with all applicable statutes and regulations. This campaign organizes individuals regionally and nationwide to work on coal-related issues and educates the public on these issues, including the impacts of coal on air and water quality. This FOIA request is made as part of these campaigns.

The following records request pertains to the Holcomb coal-fired power plant, operated by Sunflower Electric Power Corporation, and located in Garden City, Kansas (“Holcomb”). Specifically, the records requested regard a proposed 895-megawatt coal-fired generating unit at the Holcomb facility (“Holcomb Unit 2”) and two EPA rules under development: (1) Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units, under the authority of Section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b) (the “111(b) rule”); and (2) Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, under the authority of Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d) (the “111(d) rule”).



Records Requested:

1. Any and all communications, determinations, documents, notes, emails, correspondence, and other records originating from or received by EPA since April 13, 2012 regarding the applicability or non-applicability of the 111(b) rule to Holcomb Unit 2.
2. Any and all communications, determinations, documents, notes, emails, correspondence, and other records originating from or received by EPA since April 13, 2012 regarding the applicability or non-applicability of the 111(d) rule (or any potential state or federal implementation issued thereof) to Holcomb Unit 2.
3. Any and all communications, determinations, documents, notes, emails, correspondence, and other records originating from or received by EPA since April 13, 2012 regarding Holcomb Unit 2's status as a "new source" as defined under Section 111(a)(2) of the Clean Air Act, 42 U.S.C. § 7411(a)(2) and/or any related sections of the Code of Federal Regulations, including but not limited to 40 C.F.R. § 60.2.
4. Any and all communications, determinations, documents, notes, emails, correspondence, and other records originating from or received by EPA since April 13, 2012 regarding the "commence[ment] [of] construction" of Holcomb Unit 2 as that term or related terms appear in Section 111(a)(2) of the Clean Air Act, 42 U.S.C. § 7411(a)(2) and/or any related sections of the Code of Federal Regulations, including but not limited to 40 C.F.R. §§ 60.2 and 60.5.

Exempt Records

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club at the address listed below.

Fee Waiver Request

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). The Sierra Club has spent years promoting the



public interest through the development of policies that protect human health and the environment and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to use the requested information to inform the public so communities can participate meaningfully in public processes related to Holcomb.

As explained below, this FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute—that "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records must specifically concern identifiable "operations and activities of the government."

The requested records relate to EPA's correspondence and activities regarding Holcomb. These activities are "identifiable operations or activities of the government." The Department of Justice Freedom of Information Act Guide expressly concedes that "in most cases records possessed by a federal agency will meet this threshold" of identifiable operations or activities of the government. There can be no question that this is such a case.

2. The disclosure of the requested documents must have an informative value and be "likely to contribute to an understanding of Federal government operations or activities."

The FOIA Guide makes it clear that, in the Department of Justice's view, the "likely to contribute" determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain. The requested records are "likely to contribute" to an understanding of your agency's decisions because they are not otherwise in the public domain and are not accessible other than through a FOIA request. This information will facilitate meaningful public participation in decision-making processes, therefore fulfilling the requirement that the documents requested be "meaningfully informative" and "likely to contribute" to an understanding of your agency's decision-making process with regard to Holcomb.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. Under this factor, the identity and qualifications of the requester—i.e., expertise in the subject area of the request and ability and intention to disseminate the information to the public—is examined.

As described above, the Sierra Club and its members have a longstanding interest and expertise in protecting the environment. More importantly, the Sierra Club unquestionably has the "specialized



knowledge” and “ability and intention” to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the “public-at-large.”

The Sierra Club intends to disseminate the information it receives through FOIA regarding these government operations and activities in a variety of ways, including but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organization’s website, emailing, and list-serve distribution to members.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities. The public’s understanding must be likely to be enhanced by the disclosure to a significant extent.

The records requested will contribute to the public understanding of the government’s role, or their “operations and activities” associated with Holcomb. The disclosure of the requested records is essential to the public’s understanding of EPA’s operations and activities. After disclosure of these records, the public understanding of EPA’s determinations will be significantly enhanced. The requirement that disclosure must contribute “significantly” to the public understanding is therefore met.

5. Whether the requester has a commercial interest that would be furthered by the requested disclosure.

The Sierra Club has neither a commercial interest in the requested records nor any intention to use these records in any manner that “furthers a commercial, trade, or profit interest” as those terms are commonly understood. The Sierra Club is a tax-exempt organization under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. The requested records will be used for the furtherance of the Sierra Club’s mission to inform the public on matters of vital importance to the environment and public health.

6. Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the “public interest” in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required.

As noted above, the Sierra Club has no commercial interest in the requested records. Disclosure of this information is not “primarily” in the Sierra Club’s commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of EPA’s determinations regarding Holcomb.



Because the public will be the primary beneficiary of this requested information, the Sierra Club respectfully requests that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A). In the event that your agency denies a fee waiver, please send a written explanation for the denial. Also, please continue to produce the records as expeditiously as possible, but in any event no later than the applicable FOIA deadlines.

Record Delivery

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and the agency's regulations. 5 U.S.C. § 552, (a)(6)(A)(i); 40 C.F.R. § 2.104. Please produce the records above by sending them to me electronically or via postal mail at the address listed below. Please produce them on a rolling basis; at no point should the search for—or deliberation concerning—certain records delay the production of others that the agency has already retrieved and elected to produce.

If possible, please send all documents in PDF format via electronic mail, external website, or on CD or DVD via traditional mail. Alternatively, paper copies are acceptable, but electronic format is preferred. Please send all requested records as soon as possible to:

Sunil Bector
sunil.bector@sierraclub.org

— or —

Sierra Club Environmental Law Program
85 Second Street, 2nd Floor
San Francisco, CA 94105

Thank you for your cooperation. If you find that this request is unclear in any way please do not hesitate to call me to see if I can clarify the request or otherwise expedite and simplify your efforts to comply. I can be reached at 415.977.5759 or by e-mail at sunil.bector@sierraclub.org.

Respectfully submitted,

Sunil Bector
Associate Attorney
Sierra Club Environmental Law Program